



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201346012**  
Release Date: 11/15/2013

Date: August 20, 2013

UIL: 501.03-05

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

Letter 4038 (CG) (11-2005)  
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Kenneth Corbin  
Acting Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT  
ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Contact Person:

Date: June 24, 2013

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

C = State  
D = Date  
F = Occupation  
H = Vice President  
J = For Profit  
K = President  
L = Board Member

UIL:

501.03-05

Dear \_\_\_\_\_ :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c) (3). The basis for our conclusion with respect to your tax-exempt status is set forth below.

**Issue:**

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons explained below.

**Facts:**

You were created by H, your vice president, and K, your president, to disseminate advanced principles of F management around the world. Your governing body also includes L. L provided work on a project for H about five years ago. H, K and L have

governed you since inception. You have no other voting members. Your advisory board members do not have voting rights and represent for profit organizations who pay for your services.

You were incorporated in C (state) on D (date). Your purposes as stated in your Articles of Incorporation are "... to provide training, education, competence development, and qualification standards for F managers worldwide; to fund research into the best practices for F; and to provide free education programs about F to students in developing nations."

Your mission is to establish an elite cadre of F management professionals worldwide. You will advance international standards in the profession which will deliver improved value for money in corporate F management. Full membership in your organization differentiates F chain professionals from those with less comprehensive qualifications.

You describe your activities as consulting, training, mentoring and coaching. To accomplish your activities, you entered into a contract with J. J is a for profit company owned by H and his wife. You submitted a redacted copy of the contract which was restricted to Page 1 naming you and J as the parties and page 17 containing signatures. You indicate J provides:

- E-learning modules,
- Simulation environments,
- Administrative support services for your roundtable events,
- Use of copyright materials, and
- Use of benchmarking tools.

You describe the products and services provided by J as your "primary commercial activity." All your e-learning modules, benchmarking and consulting tools are proprietary to J. You use J because in your opinion there are no other companies that offer a comparable product. Your e-learning training program consists of three progressive levels and you state, "...training is the reason for the existence of (you)."

You also conduct shared learning/networking conferences you call roundtables where advisory members share management experiences and perspectives and develop usable global standards.

An insubstantial part of your activities is providing scholarships for students who lack the resources to pay for the e-learning courses. You hope to secure a sufficient number of paying students to cover your cost of providing scholarships.

Your website and materials describe your internship program and states, "...apply for an internship, boost your career opportunities." Benefits include "... enhanced career opportunities, leading advanced international certificate in F." You organize the demand for

internship placements with your affiliate companies. You pre-select applicants and send the applications to companies who select interns. Before the internship starts you provide training (through J). Students who achieve the requisite level of competence are granted certification. All of your work is "geared to the improvement of F managers."

You operate three regional service offices, one in North America, one in Europe and one in Asia. The offices provide points for marketing the training programs, administrative purposes, locales for bi-annual events and interfacing with candidates.

Your primary source of income is gross receipts for services including benchmarking and competence assessment and qualification training services.

You purchase all your e-learning products from J. You view payments to J as a license. Substantially all of your expenses are related suppliers of goods and services. You disclosed the amounts paid to J for your first two years and stated, "... amount may increase with more student enrollments." You contend the amount is not excessive and is necessary compensation to J for all that it has invested in the systems. You stated the fee you pay to J is less than 10% of J's overall earnings.

#### **Law:**

Section 501(a) of the Code provides that organizations described in section 501(c) shall be exempt under this subtitle.

Section 501(c)(3) exempts from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for:

- religious,
- charitable,
- scientific,
- testing for public safety,
- literary, or
- educational purposes, or
- to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or
- for the prevention of cruelty to children or animals,

no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (i)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.."

§1.501(a)-1(c) of the regulations defines a private shareholder or individual as "persons having a personal and private interest in the activities of the organization."

§1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order for an organization to be exempt under section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

§1.501(c)(3)-1(b)(iii) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).

§1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

§1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

§1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

§1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must serve a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

§1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged as well as the advancement of education.

Treasury Regulation §501(c)(3)-1(d)3 defines education as:

- a. "the instruction or training of the individual for the purpose of improving or developing his capabilities"

b. "the instruction of the public of subjects useful to the individual and beneficial to the community."

In Rev. Rul. 59-6, 1959-1 C.B. 121, a professional association was held not exempt under IRC 501(c)(3) where its educational program is only an incidental part of activities that had as a principal purpose the professional advancement of the members as a group.

In Rev. Rul. 67-5, 1967-1 C.B. 123, a foundation controlled by the creator's family is operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation. The Ruling found the foundation operated for a substantial non-exempt purpose and served the private interests of the creator and his family, and therefore is not entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

In Better Business Bureau v. United States, 326 U.S. 278 (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

Copyright Clearance Center, Inc. v. Commissioner, 79 T.C. 793 (1982), the court denied tax exemption under section 501(c)(3) of the Code to an organization that operated as a clearinghouse for licensing of copying and as a conduit for the transfer of license fees to copyright holders. The organization's activities served to protect the rights of copyright owners and the collection of license fees.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974) ("Harding"), a non-profit hospital with an independent board of directors executed a contract with a medical partnership composed of seven physicians. The contract gave the physicians control over care of the hospital's patients and the stream of income generated by the patients while also guaranteeing the physicians thousands of dollars in payment for various supervisory activities. The court held that the benefits derived from the contract constituted sufficient private benefit to preclude exemption.

In Church by Mail, Inc. v. Commissioner, (1985) the Court affirmed a Tax Court decision. The court determined that there was ample evidence in the record to support the finding that the organization was operated for the substantial non-exempt purpose of providing a market for the services of the for-profit company.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36, the Tax Court concluded that when a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization were carried on, the latter organization was not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

Section 501(c)(3) of the Code sets forth two main tests for qualification for tax exempt status. You must be both organized and operated exclusively for purposes described in section 501(c)(3).

Your articles expressly empower you to provide qualification standards for F managers and funding research into the best practices for F professionals. These purposes are broader than the purposes specified in section 501(c)(3).

Therefore, you are not organized exclusively for exempt purposes as provided in §1.501(c)(3)-1(b) of the regulations.

### **Operational Test**

You are also not as described in § 501(c)(3) of the Code because you are not operated exclusively for §501(c)(3) purposes. Specifically, you have failed to establish your operations will not result in inurement to H, either directly or indirectly, through J. You have failed to clearly distinguish your operation from those of J. In addition, your operations result in more than an insubstantial private benefit to individuals who take the training courses, receive certification, and participate in your programs, either directly or indirectly, through J.

You are not described in §1.501(c)(3)-1(c)(2) of the regulations because you have failed to establish your operations will not inure, directly or indirectly, to H. You are governed by a closely held board of directors including H and have entered into transactions with insiders which were not fully disclosed or conducted at arm's length.

You are not described in §1.501(c)(3)-1(b)(iii) of the regulations because you have failed to establish that your operations will not result in more than insubstantial private benefit. Specifically, you market the e-learning modules and your programs as a way to enhance an individual's career and facilitate internships at your advisory members' companies.

You are similar to Revenue Ruling 59-6 because you too offer an educational program that is only an incidental part of the activities that have as a principle purpose the professional advancement of individuals in a profession. You describe your purpose and mission as the raising of the standards of F management professionals for advancement of the members as a group.

You are similar to Revenue Ruling 67-5 because you are controlled by an insider, H, and enable J to engage in activities which are beneficial to H.

Because you too have a non charitable purpose that is substantial in nature, you are like the organization described in Better Business Bureau v. United States Raising the standards of a particular profession, certifying individuals in that profession and facilitating training of interns for your advisory members are a substantial non-charitable purposes.



Like in Harding Hospital, Inc. v. United States, you have the burden of proving you satisfy the requirements for exemption. You have not met that requirement.

Like in Church by Mail, Inc. v. Commissioner, you have contractual arrangement with a related for profit, J. Unlike Church by Mail, you have failed to disclose the terms of your agreement with J and have failed to establish to what extent J benefits from your operations. Your operations are conducted almost entirely by or through J. A mere statement that less than 10% of J's revenues are generated from services to you is insufficient as you have not disclosed the specific terms of your agreement with J.

Like Copyright Clearance Center, Inc., you essentially serve as a conduit for transferring license fees to J, a for-profit company owned by your founder, H. You purchase licenses to use the training, benchmarking and consulting materials at a 10% discount. Then you promote and sell access to the training programs to interested members of the purchase and supply manager community at the same cost that is charged by H's company, J.

Finally, you are similar to International Postgraduate Medical Foundation v. Commissioner because you increase the number of customers for J's services, and H benefits from your operations. Your promotional materials and website contain your name as well as J's name and proprietary trademarks and copyrights of J products.

### **Applicant's Position:**

You stated your activities further your mission – “to improve purchase and supply management throughout the world.” Then you explain, the “business” of purchasing and supply management is not your concern. Rather, you are concerned with the consequences of poor management, especially in “third world” countries.

You go on to state, “Searching for best practices, codifying those practices into standards that can be utilized across continents and training up-and-coming managers in the application of those standards are all a single endeavor.” You believe the training, the meetings, the coaching, the mentoring, the interning, and setting standards activities support that single charitable endeavor.

You also compare yourself to four organizations you identified as “well-recognized tax-exempt organizations” and believe your work is similar to their programs. You provided court cases and numerous revenue rulings to support your claim that your activities are charitable and educational within the meaning of IRC §501(c)(3).

Your citations were provided to support your positions on:

- The importance attached to focusing on the purpose and predominate motivation for your activities,<sup>1</sup> and

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<sup>1</sup> Redlands Surgical Services v. Commissioner, 113 TC No. 3 (July 19, 1999)

- The fact that training for members of various industries has been approved as charitable in function.<sup>2</sup>

You stated that you seek to improve the ways countless public and private organizations conduct their businesses. You believe your e-learning system is no less philanthropic than academic university study and is provided at a very low price.

Finally, you declare that "... (you) cannot be criticized as a mere vehicle for the profit of any of your founders." Your costs are low because you do not maintain a facility and your principals and advisory board are not paid. In summary, you declare that the income from your various activities does not further personal gain.

### **Service Response to Applicant's Position:**

We have considered the information you have provided as the basis of your position and added it to your file.

We are aware of the need to consider the purpose and motivation for your activities. These concepts have been previously addressed.

We hold your certification and training programs are not similar to the court cases and Revenue Rulings you provided. You do not:

- Provide training programs for a recognized charitable class (Industrial Aid to the Blind),
- Educate the general public and respond to citizen complaints at no charge (Revenue Ruling 74-615),
- Support programs directed to training individuals for national and international sports completion (Revenue Ruling 64-275),
- Provide financial and material support to public vocational training to supplement the ordinary high school curriculum (Revenue Ruling 76-37),
- Restrict your activities to preparing and conducting an annual agricultural fair for the public in cooperation with home demonstration and agricultural agents (Revenue Ruling 67-504), and
- Provide vocational training to unemployed individuals in a depressed area (Revenue

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North American Sequential Sweepstakes v. Commissioner, 77 TC 1087 (1981)  
 Presbyterian & Reformed Pub. Co. v. Commissioner, 79 TC 1070 (1982)  
 Goldsboro Art League, Inc. v. Comm'r., 75 TC 337 (1980)

<sup>2</sup> Industrial Aid for Blind v. Commissioner, 73 TC 96 (1979).  
 Revenue Ruling 68-504, 1968-2 CB 211  
 Revenue Ruling 74-615, 1974-2 CB 165 was also cited.  
 Revenue Ruling 64-275, 1964-2 CB 142.  
 Revenue Ruling 76-37, 1976-1 CB 146  
 Revenue Ruling 67-216, 1967-2 CB 180 was cited.  
 Revenue Ruling 73-128, 1973-1 CB 222

Ruling 73-128).

You do provide educational programs, but unlike the organization described in Revenue Ruling 68-504, education is an insubstantial part of your activities.

As to your alleged similarity to the four organizations you believe are currently exempt under §501(c)(3), we cannot compare your operations to the activities of other organizations. Any application for exemption must be judged on the facts specific to that case. Your activities are the sole basis for our conclusion.

### **Conclusion:**

You do not qualify for exemption under 501(c)(3) because:

1. You have failed to establish your operations will not result in inurement, either directly or indirectly, to H;
2. You have failed to establish your operations are exempt; and
3. Your operations result in more than an insubstantial private benefit.

Accordingly, we conclude you do not qualify for exemption.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading "Filing a Protest." The statement of facts must be declared true under penalties of perjury. This may be done by adding to the protest the following signed declaration:

*"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."*

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

We have mailed a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Kenneth Corbin  
Acting Director, Exempt Organizations  
Rulings and Agreements

Enclosure, Publication 892